



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0443; FRL-10193-02-R1]

**Air Plan Approval; Rhode Island; Prevention of Significant Deterioration Infrastructure
State Implementation Plan Elements for the 2012 PM_{2.5} NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving three elements of a State Implementation Plan (SIP) revision, which was submitted by the State of Rhode Island on December 6, 2017. This revision addressed the infrastructure requirements of the Clean Air Act (CAA or the Act) for the 2012 annual fine particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). On May 31, 2022, EPA approved much of the submission, but did not act on three elements related to the infrastructure requirement to have a comprehensive Prevention of Significant Deterioration (PSD) program. In today's action, EPA is approving the three remaining elements of the state's December 2017 infrastructure SIP submittal based on a previous EPA approval of Rhode Island's Air Pollution Control Regulation (APCR) No. 9. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective **[Insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0443 at <https://www.regulations.gov>, or via email to simcox.alison@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On December 6, 2017, Rhode Island submitted a SIP submission addressing the “infrastructure” SIP requirements of the Clean Air Act (CAA or Act) for the 2012 annual PM_{2.5}¹ NAAQS. Infrastructure SIP requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA for implementation of the NAAQS. On February 1, 2019, EPA published a Notice of Proposed Rulemaking proposing to approve most elements of the submission and to conditionally approve the submission for the infrastructure SIP requirement in CAA sections 110(a)(2)(C), (D)(i)(II), and (J) to have a complete Prevention of Significant Deterioration (PSD) permitting program.² *See* 84 FR 1025.

On May 31, 2022 (87 FR 32316), EPA published a Notice of Final Rulemaking (NFRM) finalizing approval of most elements of the infrastructure SIP for the 2012 PM_{2.5} NAAQS but withdrawing the proposed conditional approvals of the above-mentioned requirements in section 110(a)(2)(C), (D)(i)(II), and (J) related to the state’s PSD program and taking no further action on those elements. EPA stated that it would issue a separate action at a future date providing an evaluation of Rhode Island’s SIP for these PSD-related requirements for the 2012 annual PM_{2.5}

¹ PM_{2.5} refers to particulate matter of 2.5 microns or less in diameter, often referred to as “fine” particles.

² In particular, EPA noted that Rhode Island’s SIP did not yet incorporate: 1) a requirement to identify NO_x as a precursor to ozone in the definition of “major stationary source” from EPA’s “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline,” 70 FR 71612 (November 29, 2005); and 2) definitional changes required under an EPA Rule entitled “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration”, 75 FR 64864 (October 20, 2010); *see* 84 FR 1025 at 1027-28 (February 1, 2019). EPA had previously found, in the context of infrastructure SIP actions on other criteria pollutants, that Rhode Island’s SIP did not incorporate these requirements. *See, e.g.*, 81 FR 58849 (August 26, 2016); 81 FR 23175 (April 20, 2016).

NAAQS. The reasons for that action are given in the NFRM and are not restated here. *See* 87 FR 32316.

In this action, EPA is approving Rhode Island's SIP for the PSD-related infrastructure SIP requirements of section 110(a)(2)(C), (D)(i)(II), and (J) for the 2012 annual PM_{2.5} NAAQS. To address deficiencies in its PSD program that EPA had previously identified, *see, e.g.*, 81 FR 10168, 10171-73 (February 29, 2016), Rhode Island revised its Air Pollution Control Regulation No. 9, Air Pollution Control Permits (APCR 9), which contains the state's PSD permitting program. The state submitted these revisions to EPA on March 26, 2018, and a clarification letter on February 6, 2019.³ EPA reviewed Rhode Island's proposed revisions to APCR 9, determined that they are consistent with EPA's PSD program regulations, and, on October 2, 2019, approved the revisions into the Rhode Island SIP. *See* 84 FR 52364. In the October 2019 notice, EPA also fully approved infrastructure SIP requirements related to Rhode Island's PSD program for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 PM_{2.5} NAAQS. The rationale for EPA's determination that the revisions to APCR 9 satisfy EPA's PSD program requirement and infrastructure SIP requirements is given in the NPRM and will not be restated here. *See* 84 FR 35582 (July 24, 2019).

EPA has determined that the previously SIP-approved APCR 9 also rectifies the deficiencies indicated in our proposal to approve Rhode Island's 2012 PM_{2.5} infrastructure SIP. *See* 84 FR 1025 (February 1, 2019). The rationale for this determination is the same as that given for our approval of the March 2018 revisions to APCR 9 and will not be restated here. *See* 84 FR 35582. In addition, EPA reiterates and incorporates by reference into today's notice the discussion in our February 1, 2019, NPRM explaining that Rhode Island's SIP satisfies the other requirements for a complete PSD permitting program covering all regulated NSR pollutants. *See* 84 FR at 1027-29. Therefore,

³ Copies of Rhode Island's March 2018 SIP submission and clarification letter are included in the docket for this action.

in today's action we are approving the three PSD-related elements—CAA section 110(a)(2)(C), (D)(i)(II), and (J)—of the state's 2012 PM_{2.5} infrastructure SIP submission.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. FINAL ACTION

EPA is approving three PSD elements, including CAA section 110(a)(2)(C), (D)(i)(II), and (J) of Rhode Island's 2012 PM_{2.5} infrastructure SIP, which was submitted on December 6, 2017.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days after date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct

final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 7, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart OO - Rhode Island

2. In § 52.2070, in paragraph (e), amend the table by revising the entry for “Infrastructure SIP and Transport SIP for the 2012 PM_{2.5} NAAQS”, to read as follows:

§ 52.2070 Identification of plan.

* * * *

(e) * * *

Rhode Island Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
Infrastructure SIP and Transport SIP for the 2012 PM _{2.5} NAAQS	Statewide	12/6/2017	May 31, 2022, 87 FR 32320 and [Insert date of publication in the Federal Register] [Insert Federal Register citation]	This submittal is approved with respect to the following CAA elements: 110(a)(2) (A); (B); (C); (D); (E); (F); (G); (J); (K); (L); and (M). This submittal is disapproved for (H). This approval includes the Transport SIP for the 2012 PM _{2.5} NAAQS, which shows that Rhode Island does not significantly contribute to PM _{2.5} nonattainment or maintenance in any other state.

